

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 99-3507

St. Paul Fire and Marine Insurance
Company,

Plaintiff/Appellee,

v.

Microsoft Corporation,

Defendant/Appellant.

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Appeal from the United States
District Court for the
District of Minnesota.

[PUBLISHED]

Submitted: June 14, 2000

Filed: July 20, 2000

Before LOKEN, BRIGHT, and ROSS, Circuit Judges.

PER CURIAM.

St. Paul Fire and Marine Insurance Company ("St. Paul Fire") brought an action against Microsoft Corporation ("Microsoft") in federal district court seeking a declaratory judgment defining its obligation to defend or indemnify Microsoft under its policy insuring the Defendant.

In this action for declaratory judgment St. Paul Fire asserts that the plaintiffs in two class actions against Microsoft do not seek consequential damages, the only damages that are covered by the policy, according to St. Paul Fire. The two lawsuits

on which St. Paul Fire has refused to defend or indemnify Microsoft are Michael H. Miller, individually and on behalf of all others similarly situated v. Microsoft Corp., (Mobile County Ct., Ala.); and Mark Manning, Steve Collins and Dana Schnitzer, on behalf of themselves and all others similarly situated v. Microsoft Corp., (Dist. Ct. of Harrison County, Tex.). Each action alleges that a putative plaintiff class suffered damage when they "purchased, licensed or otherwise acquired" Microsoft's DOS 6.0 software.

The district court considered the issues on a motion for summary judgment relating to the Miller and Manning class actions and granted the motion for summary judgment. The court stated, "The explicit enumeration of the damages sought [in the lawsuits] leads to the conclusion that all other kinds of damages are excluded. Since all of the damages enumerated are direct, rather than consequential, the petitions do not state a claim for consequential damages." Appellant's Add. at 15. Accordingly, the district court entered a summary judgment order as follows:

The Court hereby declares that plaintiff is not obligated to defend or indemnify defendant under Policy No. 696NK6427 against claims asserted in the action filed in the District Court of Harrison County, Texas, entitled, *Mark Manning, Steve Collins and Dana Schnitzer, on behalf of themselves and all others similarly situated v. Microsoft Corporation.*

The Court hereby declares that plaintiff is not obligated to defend or indemnify defendant under Policy No. 696NK6427 against claims asserted in the action filed in Mobile County Court, Alabama, entitled, *Michael H. Miller, individually and on behalf of all others similarly situated v. Microsoft Corporation.*

Id., at 18.

We have carefully considered the briefs, the record, and the oral argument of the parties. We conclude that the district court opinion by the Honorable John R. Tunheim fully and fairly discusses the issues and reaches the correct result in this case.

Accordingly, we affirm on the basis of the district court opinion, St. Paul Fire and Marine Ins. Co. v. Microsoft Corp., ___ F. Supp. 2d ___ (D. Minn. 2000).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.